

1 JOHN A. YBARRA (*admitted pro hac vice*)
DAVID J. DOW, Bar No. 179407
2 MATTHEW J. RUZA (*admitted pro hac vice*)
LITTLER MENDELSON, P.C.
3 501 W. Broadway, Suite 900
San Diego, CA 92101
4 ddow@littler.com
Telephone: 619.232.0441
5 Facsimile: 619.232.4302

6 IRENE V. FITZGERALD, Bar No. 266949
LAURA E. STECKER, Bar No. 314064
7 LITTLER MENDELSON, P.C.
5200 North Palm Avenue, Suite 302
8 Fresno, California 93704.2225
ifitzgerald@littler.com
9 lstecker@littler.com
Telephone: 559.244.7500
10 Facsimile: 559.244.7525

11 Attorneys for Defendant
USA WASTE OF CALIFORNIA, INC.

12
13 **[ADDITIONAL ATTORNEYS LISTED ON NEXT PAGE]**

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE

ROSNY AGUILAR and JANETIRA
17 REED THOM, individually and on behalf
of other members of a class of similarly
18 situated employees,

19 Plaintiff,

20 v.

21 USA WASTE OF CALIFORNIA, INC., a
Delaware Corporation; and DOES 1
22 through 100,

23 Defendants.

Case No. 276829

CLASS ACTION

ASSIGNED FOR ALL PURPOSES TO JUDGE
DAVID C. MATHIAS, DEPT. 1

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

Complaint Filed: January 3, 2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dennis F. Moss (SBN 77512)
Ari E. Moss, Esq. (SBN 238579)
Jeremy F. Bollinger (SBN 240132)
Kiara Bramasco (SBN 322600)
MOSS BOLLINGER, LLP
15300 Ventura Boulevard, Suite 207
Sherman Oaks, California 91403
Telephone: (310) 982-2984
Facsimile: (818) 963-5954
dennis@mossbollinger.com
ari@mossbollinger.com
jeremy@mossbollinger.com
kiara@mossbollinger.com
Attorneys for Plaintiff ROSNY AGUILAR

William L. Marder, Cal Bar No. 170131
POLARIS LAW GROUP, LLP
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: 831.531.4214
Facsimile: 831.634.0333

Edward W. Choi, State Bar No. 211334
LAW OFFICES OF CHOI & ASSOCIATES, APLC
515 S. Figueroa St. Suite 1250
Los Angeles, CA 90010
Telephone: (213) 381-1515
Facsimile: (213) 465-4885

Larry W. Lee, Esq. SBN 228175
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

Dennis S. Hyun (State Bar No. 224240)
HYUN LEGAL, APC
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

Attorneys for Plaintiff JANETIRA REED THOM

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

2 This Joint Stipulation of Class Action Settlement and Release states the
3 proposed terms of the class action settlement of the above-entitled action. The terms
4 stated below are agreed to and binding on Plaintiff Rosny Aguilar (“Aguilar”) and
5 Janetira Reed Thom (“Thom”) (collectively, “Plaintiffs”) and Defendant USA Waste of
6 California, Inc. (“Defendant” or “USA Waste”). Once approved by the Court, the
7 Settlement shall be binding under the terms stated herein on Plaintiffs, USA Waste, and
8 the Class Members (as defined below).

9 **SUMMARY OF THE SETTLEMENT**

10 The Parties herein, as stated in more detail in the terms and definitions
11 below, have agreed to settle on a class basis all claims asserted by Plaintiffs for various
12 alleged violations of the California Labor Code and the Unfair Competition Law. The
13 class consists of all individuals employed by USA Waste in the State of California as
14 non-exempt employees during the class period defined below. The Parties conducted
15 mediation of this case on November 19, 2020 with Jeffrey Ross, after which the Parties
16 accepted the mediator’s proposal that all claims alleged herein, as defined below, would
17 be settled on a class basis for the maximum amount of One Million Five Hundred
18 Thousand Dollars (\$1,500,000.00), with no portion of the settlement reverting back to
19 Defendant. Of that settlement amount, One Hundred Thousand Dollars (\$100,000)
20 would be designated as PAGA Penalties under the Private Attorneys General Act,
21 seventy-five percent (75%) of which will be paid to the state of California and twenty-
22 five percent (25%) of which will be paid to members of the class in accordance with the
23 terms herein below.

24 **DEFINITIONS**

25 1. The following definitions are applicable to this Settlement, in addition to
26 other terms defined elsewhere in the Settlement:

27 a. “Actions” shall mean the lawsuits filed in *Aguilar v. USA Waste of*
28 *California, Inc.*, Tulare County Superior Court Case No. 276829, and *Thom v. USA*

3.

1 *Waste of California, Inc.*, Fresno County Superior Court Case No. 18CECG03190.

2 b. “*Aguilar*” means the lawsuit filed by Plaintiff Aguilar in the
3 Superior Court of the State of California for the County of Tulare, *Aguilar v. USA Waste*
4 *of California, Inc.*, Case No. 276829.

5 c. “Attorneys’ Costs” means reasonable attorneys’ costs approved by
6 the Court for Class Counsel’s litigation and resolution of the Actions incurred and to be
7 incurred by Class Counsel in the Actions up to, but not to exceed, Thirty Thousand
8 Dollars (\$30,000.00). Attorneys’ Costs shall be paid to Class Counsel. The Attorneys’
9 Costs shall be paid from the Gross Settlement Amount.

10 d. “Attorneys’ Fee Award” means the attorneys’ fees agreed upon by
11 the Parties and approved by the Court for Class Counsel’s litigation and resolution of
12 the Actions up to, but not to exceed, thirty five percent (35%) of the Gross Settlement
13 Amount. Attorneys’ Fees shall be paid to Class Counsel from the Gross Settlement
14 Amount.

15 e. “Class” and “Class Members” for purposes of this Settlement shall
16 be defined as: All individuals employed by USA Waste in the State of California as
17 hourly non-exempt employees at any time during the Class Period. The persons
18 identified in this paragraph are “Class Members” and are collectively referred to as “the
19 Class.”

20 f. “Class Counsel” shall mean Dennis F. Moss, Ari E. Moss, Jeremy
21 F. Bollinger and Kiara Bramasco of Moss Bollinger, LLP, representing Plaintiff
22 Aguilar, and William L. Marder of Polaris Law Group, Edward W. Choi of Law Offices
23 of Choi & Associates, APLC, Larry W. Lee of Diversity Law Group, P.C., and Dennis
24 S. Hyun of Hyun Legal, APC, representing Plaintiff Thom.

25 g. “Class Period” shall mean the time period from August 28, 2014
26 through January 22, 2021 (“Class Period”).

27 h. “Class Representative Service Award” shall mean an award up to,
28 but not to exceed, Ten Thousand Dollars (\$10,000.00) to each of Plaintiffs in

1 recognition of Plaintiffs Aguilar’s and Thom’s efforts and work in prosecuting the
2 Actions on behalf of Class Members, risks undertaken for the payment of costs in the
3 event of loss, and the giving of general release of all claims. The Class Representative
4 Service Awards shall be paid from the Gross Settlement Amount.

5 i. “The Court” shall mean the Superior Court of the State of California
6 for Tulare County, The Honorable David C. Mathias, Case No. 276829, or such other
7 Superior Court Judge as may be assigned to hear this matter.

8 j. “Defendant” or “USA Waste” shall mean Defendant USA Waste of
9 California, Inc.

10 k. “Effective Date” shall be sixty five (65) calendar days from the date
11 of service of a Notice of Entry of Judgment providing notice of entry of the Order
12 Granting Final Approval, as attached in **Exhibit C** and described below. However, if
13 an appeal is filed within sixty (60) days of service of the Notice of Entry of Judgment,
14 then the Effective Date shall be the latest of: (i) the date of final affirmance of the Order
15 Granting Final Approval; (ii) the expiration of the time for a petition for writ of
16 certiorari to review Order Granting Final Approval if affirmed and, if the certiorari is
17 granted, the date of final affirmance of the Order Granting Final Approval following
18 review pursuant to that grant; or (iii) the date of final dismissal of any appeal from the
19 Order Granting Final Approval or the final dismissal of any proceeding on certiorari to
20 review the Order Granting Final Approval that has the effect of confirming the Order
21 Granting Final Approval.

22 l. “Employer Taxes” means USA Waste’s share of employer-sided
23 payroll taxes to be paid on that portion of the Class Member’s Individual Settlement
24 Payment characterized as wages, i.e. FICA, FUTA, payroll taxes, and/or any similar tax
25 or charge. The Employer Taxes will be paid outside of and in addition to the Gross
26 Settlement Amount.

27 m. “Gross Settlement Amount” (or “GSA”) shall mean the maximum
28 non-reversionary amount of One Million Five Hundred Thousand Dollars

1 (\$1,500,000.00) payable by USA Waste as provided for by this Agreement.

2 n. "Individual Settlement Payment" means the amount each Class
3 Member shall be entitled to receive pursuant to the Settlement. This payment will
4 include compensation pursuant to the terms of this Agreement for all Work Weeks
5 worked during the Class Period and the number of Pay Periods worked during the
6 PAGA Period. Class Members who opt-out of the non-PAGA portion of the Settlement
7 shall only receive payment based on the number of Pay Periods worked during the
8 PAGA Period.

9 o. "LWDA Payment" means the seventy-five percent (75%) portion of
10 the PAGA Penalties to be paid to the California Labor and Workforce Development
11 Agency pursuant to the PAGA.

12 p. "Net Settlement Amount" shall mean the Gross Settlement Amount
13 less (a) the Class Representative Service Awards, (b) Settlement Administration Costs,
14 (c) Attorneys' Fees Award, (d) Attorneys' Costs, and the (e) PAGA Penalties.

15 q. "Notice Packet" shall mean the Notice of Proposed Class Action
16 Settlement substantially in the form attached as **Exhibit A**;

17 r. "Parties" shall mean collectively, Plaintiffs and Defendant.

18 s. "Plaintiffs" and "Class Representatives" shall mean Plaintiffs Rosny
19 Aguilar and Janetira Reed Thom.

20 t. "PAGA" shall mean the Private Attorneys General Act of 2004,
21 California Labor Code section 2698, *et seq.*

22 u. "PAGA Member(s)" means those Class Members who worked any
23 time during the PAGA Period.

24 v. "PAGA Members Payment" means the twenty-five percent (25%)
25 portion of the PAGA Penalties to be paid to PAGA Members pursuant to the PAGA.

26 w. "PAGA Penalties" means civil penalties under the PAGA agreed
27 upon by the Parties and approved by the Court up to, but not to exceed, One Hundred
28 Thousand Dollars (\$100,000), seventy-five percent (75%) of which will be paid to the

1 California Labor and Workforce Development Agency (“LWDA Payment”), and the
2 remaining twenty-five percent (25%) (“PAGA Members Payment”) shall be distributed
3 proportionately to PAGA Members.

4 x. “PAGA Period” means that period of time from August 28, 2017 to
5 January 22, 2021 in which PAGA Members worked.

6 y. “Participating Class Member(s)” means any Class Member who
7 does not return a valid and timely request to be excluded from the non-PAGA portion
8 of the Settlement. All Participating Class Members will be mailed their Individual
9 Settlement Payment without the need to return a claim form.

10 z. “Response Deadline” means the deadline by which Class Members
11 must postmark and return to the Administrator signed, dated, and timely requests for
12 exclusion from the non-PAGA portion of the Settlement, objections to the Settlement
13 and/or disputes concerning the number of Weeks Worked during the Class Period
14 and/or number Pay Periods worked during the PAGA Period. The Response Deadline
15 will be forty-five (45) calendar days from the initial mailing of the Notice Packets by
16 the Settlement Administrator, unless the 45th day falls on a Sunday or Federal holiday,
17 in which case the Response Deadline will be extended to the next day on which the U.S.
18 Postal Service is open. The Response Deadline will be extended fifteen (15) calendar
19 days for any Class Member who is re-mailed a Notice Packet by the Settlement
20 Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case
21 the Response Deadline will be extended to the next day on which the U.S. Postal Service
22 is open. The Response Deadline may also be extended by express agreement between
23 Class Counsel and Defendant.

24 aa. “Released Claims” means any and all claims, debts, rights,
25 demands, obligations or liabilities of every nature and description, whether known or
26 unknown, for damages, premiums, penalties, liquidated damages, punitive damages,
27 interest, attorneys’ fees, litigation costs, restitution, or equitable relief alleged, in whole
28 or in part, in the Actions based on the facts alleged in the original and amended

1 Complaints in *Aguilar* and/or *Thom*, or the letters to the Labor and Workforce
2 Development Agency, with the exception of claims premised on the failure to provide
3 rest breaks, arising during the Class Period on behalf of Class Members, including
4 without limitation: (i) failure to pay overtime on bonuses and incentive pay, (ii) failure
5 to include bonuses and incentive pay in calculating the regular rate of pay, (iii) failure
6 to issue complete and accurate itemized wage statements, (iv) waiting time penalties,
7 (v) violations of and civil penalties set forth in California Labor Code §§ 200, 201, 202,
8 203, 204, 210, 218.5, 226.3, 510, 558 and 1194; (vi) PAGA penalties; (vii) violations
9 of California Business & Professions Code § 17200 *et seq.*; (viii) violations of IWC
10 Wage Orders, including without limitation IWC Wage Orders 9-1998, 9-2000 and 9-
11 2001; (ix) as it relates to the claims referenced above, interest, attorneys' fees and costs,
12 for the duration of the Class Period. The release of the foregoing claims and definition
13 of Released Claims extends to all theories of relief regardless of whether the claim is,
14 was or could have been alleged as separate claims, causes of action, lawsuits or based
15 on other theories of relief, whether under federal law, California law or any state law or
16 common law (including, without limitation, as violations of the California Labor Code,
17 the Wage Orders, applicable regulations, California's Business and Professions Code
18 section 17200), any and all claims under the Fair Labor Standards Act and any benefits
19 under any benefit plan, program or policy sponsored or maintained by the Company,
20 including, but not limited to the Employee Retirement Income Security Act, 29 U.S.C.
21 §1001, *et seq.*, but not vested benefits under any pension or 401(k) plan or other ERISA-
22 governed benefit plan. "Released Claims" includes all types of relief available for the
23 above-referenced claims, including any claims for damages, restitution, losses,
24 premiums, penalties, fines, liens, attorneys' fees, costs, expenses, debts, interest,
25 injunctive relief, declaratory relief, or liquidated damages.

26 bb. "Released PAGA Claims" means any and all claims, debts, rights,
27 demands, obligations or liabilities of every nature and description, whether known or
28 unknown, under PAGA for penalties based on the facts alleged in the original and

1 amended Complaints in *Aguilar* and/or *Thom*, or the letters to the Labor and Workforce
2 Development Agency, with the exception of claims premised on the failure to provide
3 rest breaks, arising during the PAGA Period, including without limitation: (i) failure to
4 pay overtime on bonuses and incentive pay, (ii) failure to include bonuses and incentive
5 pay in calculating the regular rate of pay, (iii) failure to issue complete and accurate
6 itemized wage statements, (iv) waiting time penalties, (v) violations of and civil
7 penalties set forth in California Labor Code §§ 200, 201, 202, 203, 204, 210, 218.5,
8 226.3, 510, 558 and 1194; (vi) PAGA penalties; (vii) violations of California Business
9 & Professions Code § 17200 *et seq.*; (viii) violations of IWC Wage Orders, including
10 without limitation IWC Wage Orders 9-1998, 9-2000 and 9-2001.

11 cc. “Released Parties” means USA Waste of California, Inc., its past,
12 present, and future parents, subsidiaries, divisions, affiliates and related entities and
13 their respective past, present, and future officers, directors, employees, partners,
14 shareholders, owners, agents, vendors, affiliates, insurers, legal representatives,
15 attorneys and all of their successors (including persons or entities who may acquire
16 them in the future), assigns, representatives, heirs, executors, and administrators and all
17 other persons acting by, through, under or in concert with them that could be liable.

18 dd. “Settlement” or “Agreement” or “Settlement Agreement” shall
19 mean this Joint Stipulation of Class Action Settlement and Release.

20 ee. “Settlement Administrator” means Phoenix Settlement
21 Administrators or any other third-party class action settlement administrator agreed to
22 by the Parties and approved by the Court for the purposes of administering this
23 Settlement.

24 ff. “Settlement Administration Costs” means the costs allocated from
25 the Gross Settlement Amount to pay for administration of the settlement, as described
26 in this Agreement, including required tax calculations and tax reporting to the
27 appropriate governmental entities in connection with the Individual Settlement
28 Payments (as defined below), issuing of 1099 and W-2 IRS Forms, address updates

1 through the National Change of Address database (prior to the mailing of the Notice
2 Packets, distributing Notice Packets, skip-tracing Notice Packets returned as
3 undeliverable, calculating and distributing the Individual Settlement Payments, weekly
4 status reports, resolving disputed claims with the aid of the Parties' counsel, and
5 providing all reports and declarations deemed necessary by the Parties in an amount not
6 to exceed \$17,000.

7 gg. "Sub-Class 1" means all Class Members employed in a driver
8 position and/or subject to a collective bargaining agreement during the class period.

9 hh. "Sub-Class 2" means all Class members not employed in a driver
10 position and/or not subject to a collective bargaining agreement during the class period.

11 ii. "*Thom*" means the lawsuit filed by Plaintiff Thom in the Superior
12 Court of the State of California for the County of Fresno, *Thom v. USA Waste of*
13 *California, Inc.*, Case No. 18CECG03190.

14 jj. "Work Week" or "Week Worked" means any week in which a Class
15 Member or PAGA Member worked one day in that week during the Class Period or
16 PAGA Period, respectively, excepting those dates/times taken for vacations and leaves
17 of absences. Work Weeks covered by the settlement and release of claims in *Reyes v.*
18 *Waste Management, et al.*, San Diego County Superior Court Case No. 37-2013-
19 00079232-CU-OE-CTL, shall not be counted as weeks worked.

20 **SUMMARY OF THE LITIGATION AND SETTLEMENT**

21 2. On August 28, 2018, Plaintiff Janetira Reed Thom filed *Thom* on behalf of
22 herself and a putative class. Plaintiff Thom alleged causes of action against USA Waste
23 for: (1) Failure to provide accurate itemized wage statements; (2) Failure to pay
24 overtime on bonuses; and (3) Unfair competition. Plaintiff Thom sought to represent all
25 individuals employed by USA Waste in the State of California as non-exempt
26 employees at any time from August 27, 2014 through trial.

27 3. On April 1, 2019, Plaintiff Thom filed an Amended Complaint adding a
28 cause of action against USA Waste for PAGA penalties.

1 4. On January 3, 2019, Plaintiff Aguilar filed *Aguilar* on behalf of himself
2 and a putative class. Plaintiff Aguilar alleged causes of action against USA Waste for:
3 (1) Failure to pay overtime on bonuses; (2) Failure to provide rest breaks; (3) Failure to
4 provide accurate itemized wage statements; and (4) Unfair competition. Plaintiff
5 Aguilar sought to represent all individuals employed by USA Waste in the State of
6 California as non-exempt employees at any time from January 2, 2015 through trial.

7 5. On May 3, 2019, Plaintiff Aguilar filed an Amended Complaint adding a
8 cause of action against USA Waste for PAGA penalties.

9 6. On February 27, 2020, Plaintiff Aguilar filed a Request to dismiss his
10 second cause of action for failure to provide rest breaks, which the Court subsequently
11 granted.

12 7. Defendant filed Answers to the Complaints and Amended Complaints in
13 *Thom* and *Aguilar*, denying all of the material allegations in those Complaints and
14 Amended Complaints and alleging affirmative defenses, including (1) *res judicata*
15 based on a previous class action settlement in *Reyes v. Waste Management, et al.*, San
16 Diego County Superior Court Case No. 37-2013-00079232-CU-OE-CTL, (ii) the
17 collective bargaining overtime exemption pursuant to California Labor Code section
18 514, and (iii) the California motor carrier overtime exemption pursuant to Section 3(L)
19 of Wage Order 9.

20 8. The Parties conducted discovery in *Thom* and *Aguilar*, including the
21 production of putative class member information and payroll records, the deposition of
22 Defendant's person most knowledgeable regarding payment of overtime on bonuses
23 and wage statements issued by Defendant and the deposition of Plaintiff Aguilar.
24 Plaintiff Thom filed a motion for class certification, and that motion has been fully
25 briefed. The Parties recognize the issues in the Actions will likely only be resolved
26 with further extensive and costly proceedings; recognize that further litigation shall
27 cause inconvenience, distraction, disruption, delay and expense disproportionate to the
28 potential benefits of litigation; and recognize the risk and uncertainty of the outcome

1 inherent in any litigation. Based on their own independent investigation and evaluation,
2 Class Counsel is of the opinion that the Settlement with USA Waste for the
3 consideration and on the terms of this Settlement is fair, reasonable, and adequate and
4 is in the best interest of the Class in light of all known facts and circumstances, including
5 the risk of significant delay and defenses asserted by USA Waste. While USA Waste
6 specifically denies all liability in the Actions, it has agreed to enter into this Settlement
7 to avoid the cost and business disruption associated with further defense of the Actions.

8 9. The Parties participated in a mediation of this case on November 19, 2020
9 with Jeffrey Ross. At the conclusion of the mediation, Mr. Ross provided a mediator's
10 proposal, which was accepted by all parties on November 23, 2020. The Parties have
11 agreed to fully, finally, and forever compromise and settle all claims asserted in the
12 Actions. To achieve a complete release of USA Waste, each Class Member will be
13 informed that in exchange for their Individual Settlement Payment, each Participating
14 Class Member will release the Released Claims as against the Released Parties and each
15 PAGA Member will release the PAGA Released Claims as against the Released Parties.

16 **TERMS OF THE CLASS SETTLEMENT**

17 10. Gross Settlement Amount. USA Waste shall pay the Gross Settlement
18 Amount to resolve the Actions on a class-wide basis. In addition to the Gross Settlement
19 Amount, USA Waste shall pay the Employer Taxes due on the portion of the Individual
20 Settlement Payments allocated to wages. Under no circumstances shall USA Waste be
21 obligated to pay any more than the Gross Settlement Amount and the Employer Taxes.

22 11. Allocation of the Gross Settlement Amount. From the Gross Settlement
23 Amount, and subject to the approval of the Court, the Parties agree to the following
24 allocations:

25 a. Class Representative Service Awards. Plaintiffs Aguilar and Thom
26 shall each be paid a Class Representative Service Award of up to \$10,000 in recognition
27 of Plaintiffs' effort and work in prosecuting the Actions on behalf of Class Members,
28 and undertaking the burdens and risks for the payment of costs in the event of loss. The

12.

1 Class Representative Service Awards shall be paid in addition to Plaintiffs' Individual
2 Settlement Payments, and Plaintiffs must give a general release of all claims against
3 USA Waste for payment of the Class Representative Service Awards. Plaintiffs shall
4 be solely and legally responsible to pay any and all applicable taxes on their Class
5 Representative Service Awards. Any portion of the Class Representative Service
6 Awards not awarded to Plaintiffs shall remain with the Net Settlement Amount.

7 b. Settlement Administration Costs. The Settlement Administrator
8 shall be paid "Settlement Administration Costs" in an amount not to exceed \$17,000;

9 c. Attorneys' Fee Award. Class Counsel shall be paid an Attorneys'
10 Fee Award of up to \$525,000, thirty five (35) percent of the Gross Settlement Amount;

11 d. Attorneys' Costs. Class Counsel shall be paid an award for
12 reimbursement of their Attorneys' Costs in an amount of up to \$30,000;

13 e. PAGA Penalties. PAGA Penalties of \$75,000 (75% of \$100,000)
14 shall be paid to the LWDA and \$25,000 (25% of \$100,000) to Class Members who have
15 worked during pay periods in the PAGA Period. Class Members shall not have the right
16 to opt out of the PAGA portion of this Settlement.

17 12. Allocation of the Net Settlement Amount and PAGA Members Payment.

18 The Net Settlement Amount, estimated at \$808,000, and PAGA Members Payment of
19 \$25,000 shall be allocated to Class Members based on the formula described below.
20 Seventy percent of the Net Settlement Amount and the PAGA Members Payout shall
21 be distributed among Sub-Class 1. Thirty percent of the Net Settlement Amount and
22 the PAGA Members Payment shall be distributed among Sub-Class 2. Any portion of
23 the Class Representative Service Award, the Settlement Administration Costs, the
24 Attorneys' Fees Award, the Attorneys' Cost, and/or the PAGA Penalties not approved
25 by the Court shall be included in the Net Settlement Amount. No portion of the Net
26 Settlement Amount shall revert to or be retained by USA Waste under any
27 circumstance. The Net Settlement Amount and PAGA Members Payout shall be
28 distributed to Participating Class Members and PAGA Members on a proportionate

13.

1 basis as follows:

2 a. Work Week Rate. For each member of the Class, USA Waste shall
3 determine the number of Work Weeks during the Class Period based on its business and
4 payroll records. For calculation purposes, a partial workweek shall be considered the
5 same as a full workweek. The Administrator shall tabulate the aggregate number of
6 Work Weeks worked by all Class Members in Sub-Class 1 and Sub-Class 2,
7 respectively, and divide the portion of the Net Settlement Amount allocated to each
8 Sub-Class by that aggregate number for each Sub-Class to arrive at the Work Week
9 Rate for each Sub-Class.

10 b. Pay Period Rate. USA Waste shall determine, for each PAGA
11 Member, the number of Pay Periods, if any, worked during the PAGA Period based on
12 its business and payroll records. The Administrator shall tabulate the aggregate number
13 of Pay Periods for Sub-Class 1 and Sub-Class 2, respectively, and divide the portion of
14 PAGA Members Payment allocated to each Sub-Class, i.e., \$17,500 for Sub-Class 1
15 and \$7,500 for Sub-Class 2, by the aggregate number of Pay Periods for each Sub-Class
16 to arrive at the Pay Period Rate for each Sub-Class.

17 c. Individual Settlement Payments. Participating Class Members shall
18 receive an Individual Settlement Payment representing payment for all Work Weeks
19 worked during the Class Period, and for all Pay Periods, if any, worked during the
20 PAGA Period, at the rates calculated in the preceding paragraphs. Class Members who
21 opt out of the non-PAGA portion of the settlement shall receive an Individual
22 Settlement Payment representing payment for all Pay Periods, if any, worked during the
23 PAGA Period, at the rates calculated in the preceding paragraphs. In the event that a
24 Class Member should dispute the information upon which his or her Individual
25 Settlement Payment is calculated, and it is determined by the Administrator from the
26 information and/or documentation provided by that Class or PAGA Member, that an
27 amount more than that initially calculated is payable to any Participating Class Member
28 or PAGA Member pursuant to the Settlement, that additional amount will be paid from

1 the Gross Settlement Amount. In no event shall USA Waste ever be required to pay
2 any amount greater than the Gross Settlement Amount and the Employer Taxes.

3 13. No Credit Toward Benefit Plans. Unless otherwise required by any
4 applicable benefit plan, the Individual Settlement Payments made to Settlement Class
5 Members, as well as any other payments made pursuant to this Settlement, shall not be
6 construed as compensation for nor utilized to calculate any additional benefits under
7 any benefit plans to which any Class Members may otherwise be eligible, including,
8 but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans,
9 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Unless
10 otherwise required by any applicable benefit plan, this Settlement shall not affect any
11 rights, contributions, or amounts to which any Class Members may be entitled under
12 any benefit plans.

13 **AMENDMENT OF AGUILAR AND DISMISSAL OF THOM**

14 14. Amendment of Aguilar. Within five (5) days of execution of this
15 Settlement Agreement, the Parties shall file a Stipulation to File a Second Amended
16 Complaint in *Aguilar* adding Plaintiff Thom as a Plaintiff in *Aguilar* and alleging causes
17 of action against USA Waste for: (1) Failure to pay overtime on bonuses and incentive
18 pay; (2) Failure to provide accurate itemized wage statements; (3) Waiting time
19 penalties; (4) Unfair competition; and (5) PAGA penalties. These causes of action shall
20 be premised on allegations that USA Waste failed to pay overtime on bonuses and
21 incentive pay and failed to provide complete and accurate itemized wage statements
22 and derivative claims based on those allegations.

23 15. Dismissal of Thom. Within five (5) days of the filing of the Second
24 Amended Complaint in *Aguilar*, Plaintiff Thom and USA Waste shall file a stipulation
25 to request to dismiss the *Thom* Action without prejudice.

26 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

27 16. Preliminary Approval: Upon execution of this Settlement, Plaintiffs shall
28 file a Motion for Order Granting Preliminary Approval of the Class Action Settlement

15.

1 which requests the following: (i) preliminary approval of the Settlement, subject only
2 to the objections of Settlement Class Members and final review by the Court; (ii)
3 conditional certification of a class for purposes of settlement only; (iii) a schedule for
4 final approval hearing regarding the proposed Settlement, including payment of
5 Attorneys' Fees and Attorneys' Costs, and Class Representative Service Awards;
6 (iv) approval as to form and content of the proposed Notice Packet; (v) a schedule for
7 the procedures for the Response Deadline; and (vi) a schedule for the mailing of the
8 Notice Packet by first class mail to the Class Members, as substantially reflected in the
9 proposed Order Granting Preliminary Approval, attached as **Exhibit "B"**. Plaintiffs'
10 Counsel will provide counsel for Defendant with a draft of the motion for preliminary
11 approval at least seven (7) calendar days before it is filed with the Court for Defendant's
12 review and input. Defendant shall not oppose the Preliminary Approval Motion and
13 may, in its sole option, file a declaration of non-opposition. Concurrently with the filing
14 of the Preliminary Approval Motion, counsel for Plaintiff shall submit a copy of this
15 Agreement to the LWDA, and provide proof of said submission to the Court and counsel
16 for Defendant.

17 17. Class Action Certification for Settlement Purposes Only. The Parties agree
18 to stipulate to certification of the Class for purposes of the Settlement only. If, for any
19 reason, the Settlement is not approved, the stipulation to certification shall be void. The
20 Parties further agree that certification for purposes of the Settlement is not an admission
21 that class action certification is proper under the standards applied to contested
22 certification motions and that this Settlement shall not be admissible in this or any other
23 proceeding as evidence that either: (i) a class action should be certified or (ii) USA
24 Waste is liable to Plaintiffs or any Class Member, other than according to the
25 Settlement's terms.

SETTLEMENT ADMINISTRATION

27 18. Settlement Administrator. The Parties each represent that they do not have
28 any financial interest in the Settlement Administrator or otherwise have a relationship

1 with the Settlement Administrator that could create a conflict of interest.

2 19. Class Data. Within 14 days of the Order Granting Preliminary Approval,
3 USA Waste shall provide to the Settlement Administrator for each identifiable member
4 of the Class the following information: name, address, social security number,
5 telephone numbers, dates of employment, and the number of Work Weeks worked
6 during the Class Period in Sub-Class 1 and/or Sub-Class 2 and the number of Pay
7 Periods worked during the PAGA Period (“Class Data List”) in Sub-Class 1 and/or Sub-
8 Class 2. The Class Data List and information shall remain confidential. The Settlement
9 Administrator shall only use this information to facilitate notice, administration of the
10 Settlement, and for distribution of Individual Settlement Payments to Participating
11 Class Members. The Parties agree to cooperate in the administration of the Settlement
12 and to make all reasonable efforts to control and minimize the costs and expenses
13 incurred in administration of the Settlement.

14 20. Duty to Protect Class Data. The Settlement Administrator shall represent
15 and warrant that it shall: (i) provide reasonable and appropriate administrative, physical
16 and technical safeguards for the Class Data List that it receives from USA Waste;
17 (ii) not disclose the Class Data List to Class Counsel, Named Plaintiffs, any party or
18 third parties, including agents or subcontractors, without USA Waste’s consent and
19 keep the Class Data List confidential; (iii) not disclose or otherwise use the Class Data
20 other than to carry out its duties as set forth herein; and (iv) promptly provide USA
21 Waste with notice if it becomes aware that the Class Data List becomes subject to
22 unauthorized access, use, or disclosure.

23 21. Confirmation of Contact Information in the Class Lists. Following receipt
24 of the Class Data List from USA Waste, and prior to mailing, the Settlement
25 Administrator shall perform a search of the National Change of Address Database to
26 update and correct stale Class Member addresses. If any Notice Packet is returned to
27 the Settlement Administrator as non-deliverable on or before the Response Deadline,
28 within three days of its receipt, the Settlement Administrator shall send it promptly via

1 regular First-Class U.S. Mail to the forwarding address affixed thereto, and the
2 Settlement Administrator shall indicate the date of such re-mailing on the Notice Packet.
3 If no forwarding address is provided, the Settlement Administrator shall promptly
4 attempt to determine the correct address by using a skip-trace, or other search using the
5 name, address and/or social security number of the Class Member involved, and shall,
6 within three days of learning the correct address, re-mail the Notice Packet. Should a
7 Notice Packet associated with a currently employed Class Member be returned to the
8 Administrator, it shall immediately inform USA Waste to obtain a more current mailing
9 address for that Class Member to re-mail the Notice Packet.

10 22. Notice by First-Class U.S. Mail. Within fourteen (14) business days
11 following USA Waste’s provision of the Class Data List to the Settlement Administrator
12 as set forth in Paragraph 17, supra, the Administrator shall mail the individualized
13 Notice Packet by First Class U.S. Mail. Each individualized Notice of Class Action
14 Settlement (“Notice” – Exhibit “A”) shall include the Class Member’s dates of
15 employment and the number of Weeks Worked during the Class Period in Sub-Class 1
16 and/or Sub-Class 2, and the number of Pay Periods worked during the PAGA Period in
17 Sub-Class 1 and/or Sub-Class 2, and the estimated Individual Settlement Payment
18 amount. The Notice will also inform the Class of their right to opt-out of the non-PAGA
19 portion of the Settlement and that they each will be mailed their Individual Settlement
20 Payment at the address on file with the Administrator. The Notice will also inform the
21 Class of the manner and deadline to submit (1) requests for exclusion from the non-
22 PAGA portion of the Settlement, (2) objections to the Settlement; and (3) disputes
23 concerning the number of Weeks Worked during the Class Period or the number of Pay
24 Periods worked during the PAGA Period. The Notice further informs the Class of the
25 claims to be released, including if they do not request to be excluded, and the date, time,
26 and place set for the Final Approval Hearing.

27 23. Disputed Workweek and/or Pay Period Information. Class Members may
28 contact the Settlement Administrator with questions regarding the number of Weeks

1 Worked they have been assigned during the Class Period in Sub-Class 1 and/or Sub-
2 Class 2 or the number of Pay Periods in Sub-Class 1 and/or Sub-Class 2. Class
3 Members may produce evidence to the Settlement Administrator showing that such
4 information is inaccurate. There is a rebuttable presumption that USA Waste's
5 personnel and payroll records are correct, but Class Members may, should they disagree
6 with USA Waste's records, provide documentation to show contrary employment dates
7 and/or records of Weeks Worked or Pay Periods no later than the Response Deadline.
8 The dispute must: (i) set forth the name, address, telephone number and last four digits
9 of the social security number of the Class Member submitting the dispute; (ii) be signed
10 by the Class Member; (iii) be timely returned to the Settlement Administrator;
11 (iv) clearly state the reason(s) that the Class Member disputes the information provided
12 contained in the Notice Packet; and (v) be postmarked on or before the Response
13 Deadline. All disputes shall be decided within ten (10) business days of the Response
14 Deadline.

15 24. Request for Exclusion Procedures. Any Class Member wishing to opt-out
16 from the non-PAGA portions of the Settlement must sign and postmark a written
17 Request for Exclusion to the Settlement Administrator, in the manner set forth in the
18 Notice, by the Response Deadline. The Request for Exclusion must: (i) set forth the
19 name, address, telephone number and last four digits of the Social Security number of
20 the Class Member requesting the exclusion; (ii) be signed by the Class Member; (iii) be
21 timely returned to the Settlement Administrator; (iv) clearly state that the Class Member
22 does not wish to be included in the non-PAGA portion of the Settlement and does not
23 wish to receive any payment or other benefits therefrom; and (v) be postmarked on or
24 before the Response Deadline. The postmark date shall be the exclusive means to
25 determine whether a Request for Exclusion has been timely submitted. No Request for
26 Exclusion may be made on behalf of a group of Class Members. Weeks Worked by
27 Class Members who have submitted a valid and timely Request for Exclusion shall be
28 deducted from the aggregate number of Weeks Worked. Class Members shall not have

1 the right to opt-out from the PAGA portion of the Settlement.

2 25. Defective Submissions. If a Class Member's Request for Exclusion is
3 defective as to any of the requirements listed herein, that Class Member shall be given
4 an opportunity to cure the defect(s). The Settlement Administrator shall mail the Class
5 Member a cure letter within three (3) business days of receiving the defective
6 submission to advise the Class Member that his or her submission is defective and that
7 the defect must be cured to render the Request for Exclusion valid. The Class Member
8 shall have until (i) the Response Deadline or (ii) ten (10) calendar days from the date of
9 the cure letter, whichever date is later, to postmark a revised Request for Exclusion. If
10 the revised Request for Exclusion is not postmarked within that period, it shall be
11 deemed untimely. Class Members shall be limited to one cure letter advising them of
12 the defect. A Class Member who submits an invalid or untimely request to be excluded
13 will remain a Class Member, will receive their Settlement Share, and be bound by the
14 releases and judgment entered as set forth herein. The invalid and untimely request for
15 exclusion shall be deemed null and void.

16 26. Objection Procedures. To object to the Settlement, a Class Member must
17 postmark a valid Notice of Objection to the Settlement Administrator on or before the
18 Response Deadline. The Notice of Objection must be signed by the Class Member and
19 contain all information required by this Settlement and as set forth in the Notice of Class
20 Action Settlement. For the Notice of Objection to be valid, it must include: (i) the
21 objector's full name, signature, address, and telephone number; (ii) a written statement
22 of all grounds for the objection accompanied by any legal support for such objection;
23 (iii) copies of any papers, briefs, or other documents upon which the objection is based;
24 and (iv) a statement whether the objector intends to appear at the Final Approval
25 Hearing. The postmark date shall be deemed the exclusive means for determining that
26 the Notice of Objection is timely. Only Class Members who have not opted out of the
27 class portion of the Settlement may object. Any Class Member who does not submit a
28 timely written objection to the Settlement, or who fails to otherwise comply with the

1 specific and technical requirements of this Paragraph as provided in the Notice, shall be
2 foreclosed from objecting to the Settlement and seeking any adjudication or review of
3 the Settlement, by appeal or otherwise. Class Members who postmark timely Notices
4 of Objection shall have a right to appear at the Final Approval Hearing in order to have
5 their objections heard by the Court. At no time shall any of the Parties or their counsel
6 seek to solicit or otherwise encourage Class Members to submit written objections to
7 the Settlement or appeal from the Final Approval and Judgment. Class Counsel shall
8 not represent any Class Members with respect to any such objections to this Settlement.
9 The Parties shall file all Notices of Objection, valid or invalid, timely or untimely, with
10 the Court in advance of the Final Approval/Settlement Fairness Hearing. If the Court
11 overrules the Class Member's objection, or if the Court approves the Settlement despite
12 any objections, the Class Member will be deemed to be a Participating Class Member
13 and will be bound by the terms of this Agreement, and will be mailed their Individual
14 Settlement Payment.

15 27. Settlement Administrator Reports Regarding Class Member Participation.

16 The Settlement Administrator shall provide Defendant's counsel and Class Counsel a
17 weekly report that certifies the number of Class Members who have submitted valid
18 Requests for Exclusion, objections to the Settlement, and whether any Class Member
19 has submitted a challenge to any information contained in their Notices. The Settlement
20 Administrator shall provide to counsel for both Parties any updated reports regarding
21 the administration of the Settlement as needed or requested. Not later than fourteen
22 (14) days after the final Response Deadline, the Settlement Administrator will provide
23 the Parties with a complete and accurate list of all Participating Class Members, all Non-
24 Participating Class Members, and all Class Members who objected to the Settlement
25 Agreement.

26 28. Settlement Administrator Declaration. Not later than twenty-eight (28)

27 court days prior to the Final Approval Hearing, the Settlement Administrator will
28 provide the Parties with its declaration of due diligence setting forth its compliance with

1 its obligations under this Agreement to be filed with the Court, and will supplement its
2 declaration as needed or as requested by the Court.

3 29. Settlement Administrator Final Report. By no later than five (5) calendar
4 days following the Effective Date, the Settlement Administrator shall provide counsel
5 for both Parties with the aggregate number of Weeks Worked by Participating Class
6 Members during the Class Period, and aggregate number of Pay Periods worked by
7 PAGA Members during the PAGA Period. Upon completion of administration of the
8 Settlement, the Settlement Administrator shall provide a written declaration under oath
9 to certify such completion to the Court and counsel for all Parties.

10 30. USA Waste's Right to Rescind. USA Waste shall have, in its sole
11 discretion, the right to void and withdraw from the Settlement if, at any time prior to
12 Final Approval, five percent (5%) or more of Class Members timely and validly
13 Request Exclusion from the non-PAGA portion of the Settlement. USA Waste must
14 exercise this right of rescission in writing to Class Counsel within thirty (30) calendar
15 days after the latest date any Class Member may timely submit his or her Request for
16 Exclusion. If USA Waste exercises its right of rescission pursuant to this paragraph,
17 USA Waste shall be responsible for all costs incurred by the Settlement Administrator.

18 31. Plaintiffs' Right to Rescind. Prior to the filing of Preliminary Approval
19 papers, Defendant will provide Class Counsel updated payroll data for the Class
20 Members. If the number of bonus pay periods during the Class Period as reflected in
21 the updated payroll data exceeds the number of bonus pay periods during the Class
22 Period as reflected in the original data by more than 5%, Plaintiffs may, at their option,
23 void the agreement and/or attempt to reach some other agreement to preserve the
24 settlement. Plaintiffs must exercise this right of rescission in writing to counsel for
25 USA Waste prior to the hearing on the Motion for Preliminary Approval.

26 **FINAL APPROVAL**

27 32. Final Settlement Approval Hearing and Entry of Judgment. Upon
28 expiration of the Response Deadline as ordered by the Court at the time of the

1 Preliminary Approval Hearing, a Final Approval Hearing shall be conducted to
2 determine the Final Approval of the Settlement along with the amounts properly
3 payable for: (i) Individual Settlement Payments; (ii) the Class Representative Service
4 Awards; (iii) Attorneys' Fee Award; (iv) Attorneys' Costs; (v) Settlement
5 Administration Costs; and (vi) PAGA Penalties. The Final Approval Hearing shall not
6 be held earlier than thirty (30) calendar days after the Response Deadline. Class
7 Counsel shall be responsible for drafting all documents necessary to obtain final
8 approval. The Motion for Order Granting Final Approval and Entering Judgment shall
9 include Class Counsel's application for the Class Counsel's Attorneys' Fees and Costs,
10 the Class Representative Service Awards, and the Administrator's expenses. A draft of
11 such motion shall be provided to Counsel for Defendant seven business days prior to its
12 filing with the Court. Plaintiffs agree not to file their motion and/or application without
13 Defendant's review and input. The Settlement Administrator shall maintain on its
14 website a section for this Settlement which includes a copy of the Motion for
15 Preliminary Approval, along with any accompanying exhibits, and the operative
16 complaint. It shall be updated after Judgment is entered with a copy of the final
17 Judgment.

18 33. Attorneys' Fee Award and Costs. USA Waste shall not object to Class
19 Counsel's request of reasonable Attorneys' Fees of up to \$525,000 (35% of the Gross
20 Settlement Amount) and their reasonable Attorneys' Costs estimated at \$30,000. Class
21 Counsel's application for Attorneys' Fees and Costs award shall be included within the
22 Motion for Order Granting Final Approval of Class Action Settlement, unless the Court
23 instructs otherwise.

24 34. Judgment and Continued Jurisdiction. Concurrent with the Motion for
25 Order Granting Final Approval of the Class Action Settlement, the Parties shall present
26 the Order Granting Final Approval and Entering Judgment to the Court, in a form
27 substantially similar to **Exhibit "C"**, for approval. After entry of the Judgment, the
28 Court shall have continuing jurisdiction over the Settlement as required by law,

1 including: (i) the interpretation and enforcement of the terms of the Settlement;
2 (ii) settlement administration matters; and (iii) such post-Judgment matters as may be
3 appropriate under court rules or as set forth in this Settlement.

4 35. Funding of the Settlement. USA Waste shall transmit the Gross Settlement
5 Amount to the Administrator together with the amount representing the Employer
6 Taxes (to be communicated by the Administrator to USA Waste at least (5) business
7 days before transmittal of the Gross Settlement Amount). The Administrator shall
8 deposit the Gross Settlement Amount into a Qualified Settlement Account, from which
9 the Settlement Administrator will have the authority to distribute money in accordance
10 with the terms of this Settlement Agreement. USA Waste shall transmit the Gross
11 Settlement Amount and the Employer Taxes, within ten (10) business days following
12 the Effective Date of Settlement.

13 36. No Effective Date. If there is no Effective Date: (i) the Settlement
14 Agreement shall have no force and effect and no Party shall be bound by any of its
15 terms; (ii) USA Waste shall have no obligation to make any payments required under
16 this Agreement; (iii) the Parties shall evenly distribute and pay any Administration
17 Costs incurred up until the date that the Settlement ceases to exist; and (iv) the
18 Settlement Agreement and all negotiations, statements, proceedings, and data relating
19 thereto shall be protected as privileged settlement communications and shall be without
20 prejudice to the rights of any of the Parties, all of whom shall be restored to their
21 respective positions in the Actions prior to the date of execution of the Settlement
22 Agreement. In such event, the Parties shall work cooperatively to request a conference
23 with the Court in which to attempt to resolve any issues that the Court has raised
24 regarding the Agreement so that it can gain the Court's approval, or alternatively,
25 effectuate their intent to resume the Actions.

26 37. Distribution and Timing of Payments. Within ten (10) calendar days
27 following receipt of the Gross Settlement Amount and the Employer Taxes, the
28 Settlement Administrator shall issue payments to: (i) Participating Class Members, (ii)

1 PAGA Members, (iii) Plaintiffs, (iv) Class Counsel, and (v) the Labor Workforce and
2 Development Agency. However, payments shall not be issued to Class Members whose
3 Notice Packets are returned as undeliverable and for whom no forwarding address can
4 be located. Individual Settlement Payments for such Class Members shall be held by
5 the Settlement Administrator unless claimed by the Class Member, and shall be paid to
6 the *cy pres* beneficiary as set forth below if unclaimed by the end of the one hundred
7 eighty (180) calendar day period to cash settlement checks as set forth below. The
8 Settlement Administrator shall also issue a payment to itself for the Court-approved
9 amount for its services.

10 38. Un-cashed Settlement Checks. Settlement checks shall remain valid for a
11 period of one hundred eighty (180) calendar days after mailing, at which time the checks
12 shall become null and void. Thirty (30) days following the mailing of the Individual
13 Settlement Payment Checks, the Administrator shall mail a postcard to each
14 Participating Class Member and PAGA Member whose check is uncashed to remind
15 them of the void date. Any funds represented by Individual Settlement Payment checks
16 remaining un-cashed for more than 180 calendar days after issuance shall be delivered
17 to the Central California Food Bank. Participating Class Members and PAGA Members
18 who fail to cash their checks within the 180 day period shall remain bound by the
19 Settlement as set forth herein.

20 39. Administration of Taxes by the Settlement Administrator. The Settlement
21 Administrator shall be responsible for issuing to Plaintiffs, Participating Class
22 Members, PAGA Members and Class Counsel any W-2, 1099, or other tax forms as
23 may be required by law for all amounts paid pursuant to this Settlement. The Settlement
24 Administrator shall also be responsible for calculating and processing all payroll taxes
25 and penalties for payment to the appropriate government authorities.

26 **TAX TREATMENT OF SETTLEMENT AMOUNTS**

27 40. Tax Treatment of Individual Settlement Payments. The Parties have
28 agreed to allocate the Individual Settlement Payment as follows: for Participating Class

1 Members - one-third to wages for which an IRS W-2 Form shall be issued, two-thirds
2 to interest and penalties for which IRS 1099 Forms shall be issued. Normal employee-
3 side payroll taxes and withholding shall be deducted from the wage portion of the
4 payment pursuant to state and federal law. For Class Members who opt-out of the non-
5 PAGA portion of the Settlement, the entirety of the Individual Settlement Payments
6 shall be allocated to penalties for which IRS 1099 Forms shall be issued.

7 41. Class Member and Plaintiffs' Responsibility for Taxes. Participating
8 Class Members and PAGA Members are responsible to pay appropriate taxes due on
9 the Individual Settlement Payments they receive, and Plaintiffs are responsible for
10 paying the appropriate taxes due on the Class Representative Service Payments. All
11 Individual Settlement Payments shall be deemed paid to such Settlement Class
12 Members solely in the year in which such payments are issued. Counsel does not purport
13 this communication to constitute tax or legal advice. If this Settlement, or any of its
14 attachments, is interpreted to contain or constitute advice regarding any federal or state
15 tax issue, such advice is not intended or written to be used, and cannot be used, by any
16 person to avoid penalties under the federal Internal Revenue Code or any state tax code.
17 The Notice of Class Action Settlement will advise Class Members that they shall be
18 solely responsible for the payment of any taxes and penalties assessed on their
19 respective Individual Settlement Payments.

20 42. Class Counsel shall be issued an IRS Form 1099 for any fees and costs
21 awarded by the Court.

22 **RELEASE BY THE CLASS**

23 43. Settlement Terms Bind All PAGA Members and Class Members Who Do
24 Not Request Exclusion. As of the Effective Date, Plaintiffs and all Participating Class
25 Members (on behalf of each of them and each of their heirs, executors, administrators,
26 and assigns) irrevocably and unconditionally fully release and forever discharge the
27 Released Parties from any and all Released Claims that accrued during the Class Period,
28 as set forth herein. As of the Effective Date, Plaintiffs and all PAGA Members (on

1 behalf of each of them and each of their heirs, executors, administrators, and assigns)
2 irrevocably and unconditionally fully release and forever discharge the Released Parties
3 from any and all PAGA Released Claims that accrued during the PAGA Period as set
4 forth herein.

5 44. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
6 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH
7 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
8 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
9 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION
10 OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
11 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
12 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
13 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING
14 OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR
15 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
16 RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL
17 AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
18 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
19 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER
20 PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND
21 (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
22 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO
23 AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
24 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY
25 OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
26 CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
27 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY
28 BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE

1 TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION,
2 INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

3 45. Release by Plaintiffs and Class Representatives. As of the Effective Date,
4 Plaintiffs (on each of their behalf and on behalf of each of their heirs, executors,
5 administrators, and assigns), but not on behalf of other Class Members, knowingly and
6 voluntarily releases and forever discharges the Released Parties from any and all claims,
7 known and unknown, asserted and unasserted, that they each had or may have had
8 against Defendant or any of the Released Parties. Such claims include, but are not
9 limited to: breaches of contract, whether written, oral or implied; violations of any
10 public policy; tort claims, including but not limited to intentional infliction of emotional
11 distress and negligent infliction of emotional distress, defamation, misrepresentation,
12 and fraud; retaliation claims; common law claims; any other claims for damages, costs,
13 fees, or other expenses, including attorneys' fees; and any violations of the following
14 statutes, laws, and regulations: Fair Labor Standards Act, 29 U.S.C. §§ 200, *et seq.*,
15 Title VII of the Civil Rights Act of 1964, as amended; The Civil Rights Act of 1991;
16 Sections 1981 through 1988 of Title 42 of the United States Code, as amended; The
17 Americans with Disabilities Act of 1990, as amended; The Age Discrimination in
18 Employment Act of 1967, as amended; the Older Workers Benefit Protection Act; the
19 Employment Retirement Income Security Act of 1974, as amended; the Occupational
20 Safety and Health Act, as amended; the Sarbanes-Oxley Act of 2002; the Family and
21 Medical Leave Act of 1993, as amended; the Fair Labor Standards Act; the California
22 Fair Employment and Housing Act – Cal. Gov't Code § 12900 *et seq.*; the California
23 Family Rights Act – Cal. Gov't Code § 12945.2 *et seq.*; the California Unruh Civil
24 Rights Act – Civ. Code § 51 *et seq.*; the California Whistleblower Protection Law –
25 Cal. Lab. Code § 1102.5; the California Occupational Safety and Health Act, as
26 amended – Cal. Lab. Code § 6300 *et seq.*, and any applicable regulations thereunder;
27 the California Business and Professions, Civil, Government and Labor Code; the Labor
28 Code Private Attorneys General Act of 2004 – Cal. Lab. Code § 2698 *et seq.*; and any

28.

1 other federal, state, or local civil employment law, statute, regulation, or ordinance
2 capable of being released by Plaintiffs, excluding any claims that cannot be released as
3 a matter of law. To the extent the foregoing release is a release to which California
4 Civil Code section 1542 or similar provisions of other applicable law may apply,
5 Plaintiffs expressly waive any and all rights and benefits conferred upon them by the
6 provisions of California Civil Code section 1542 or similar provisions of applicable law
7 which are as follows:

8 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
9 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**
10 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
11 **THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST**
12 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
13 **WITH THE DEBTOR.**
14

15 Thus, notwithstanding the provisions of California Civil Code section 1542, and
16 to implement a full and complete release and discharge, Plaintiffs each expressly
17 acknowledge this Settlement is intended to include in its effect, without limitation, all
18 known and unknown claims, including any claims they do not know or suspect to exist
19 in their favor against the Released Parties at the time of signing this Settlement, and that
20 this Settlement contemplates the extinguishment of any such claim or claims. Plaintiffs
21 each acknowledges they may later discover facts different from or in addition to those
22 they now know or believe to be true regarding the matters released or described in this
23 Settlement, and nonetheless agrees that the releases and agreements contained in this
24 Settlement shall remain fully effective in all respects notwithstanding any later
25 discovery of any different or additional facts. Plaintiffs each assume any and all risks
26 of any mistake in connection with the true facts involved in the matters, disputes, or
27 controversies described in this Settlement or with regard to any facts now unknown to
28 each of them relating to such matters.

1 represent they are expressly authorized by the Parties whom they represent to negotiate
2 this Settlement and to take all appropriate action required or permitted to be taken by
3 such Parties pursuant to this Settlement to effectuate its terms and to execute any other
4 documents required to effectuate the terms of this Settlement. The Parties and their
5 counsel shall cooperate with each other and use their best efforts to effect the
6 implementation of the Settlement. If the Parties are unable to reach agreement on the
7 form or content of any document needed to implement the Settlement, or on any
8 supplemental provisions that may become necessary to effectuate the terms of this
9 Settlement, the Parties may seek the assistance of the Court to resolve such
10 disagreement.

11 52. Binding on Successors and Assigns. This Settlement shall be binding
12 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as
13 previously defined.

14 53. California Law Governs. All terms of this Settlement and Exhibits hereto
15 shall be governed by and interpreted according to the laws of the State of California.

16 54. Execution and Counterparts. This Settlement is subject only to the
17 execution of all Parties. However, the Settlement may be executed in one or more
18 counterparts and by DocuSign. All executed counterparts and each of them, including
19 facsimile and scanned copies of the signature page, shall be deemed to be one and the
20 same instrument provided that counsel for the Parties shall exchange among themselves
21 original signed counterparts.

22 55. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
23 believe this Settlement is a fair, adequate and reasonable settlement of the Actions and
24 have arrived at this Settlement after arm's-length negotiations and in the context of
25 adversarial litigation, taking into account all relevant factors, present and potential. The
26 Parties further acknowledge that they are each represented by competent counsel and
27 that they have had an opportunity to consult with their counsel regarding the fairness
28 and reasonableness of this Settlement.

1 56. Acknowledgement of Future Legislation. Each Party recognizes that
2 legislation, could affect the outcome of the Actions. The Parties, nevertheless, enter
3 into this settlement to avoid risk of loss and to avoid uncertainty with the interpretation,
4 nature, and applicability of future legislation.

5 57. Invalidity of Any Provision. Before declaring any provision of this
6 Settlement invalid, the Court shall first attempt to construe the provision as valid to the
7 fullest extent possible consistent with applicable precedents so as to define all
8 provisions of this Settlement valid and enforceable.

9 58. Waiver of Certain Appeals. The Parties agree to waive appeals and to
10 stipulate to class certification for purposes of this Settlement only; except, however, that
11 Plaintiffs or Class Counsel may appeal any reduction to the Attorneys' Fees or the
12 Attorneys' Costs below the amounts they request from the Court, and either party may
13 appeal any court order that materially alters the Settlement terms.

14 59. Non-Admission of Liability. The Parties enter into this Settlement to
15 resolve the dispute that has arisen between them and to avoid the burden, expense and
16 risk of continued litigation. In entering into this Settlement, USA Waste and the
17 Released Parties do not admit, and specifically deny, that USA Waste or any Released
18 Parties violated any federal, state, or local law; violated any regulations or guidelines
19 promulgated pursuant to any statute or any other applicable laws, regulations or legal
20 requirements; breached any contract; violated or breached any duty; engaged in any
21 misrepresentation or deception; or engaged in any other unlawful conduct with respect
22 to their employees. Neither this Settlement, nor any of its terms or provisions, nor any
23 of the negotiations connected with it, shall be construed as an admission or concession
24 by USA Waste (or any Released Parties) of any such violations or failures to comply
25 with any applicable law. Except as necessary in a proceeding to enforce the terms of
26 this Settlement, this Settlement and its terms and provisions shall not be offered or
27 received as evidence in any action or proceeding to establish any liability or admission
28 on the part of USA Waste (or any Released Parties) or to establish the existence of any

1 condition constituting a violation of, or a non-compliance with, federal, state, local or
2 other applicable law.

3 60. Waiver. No waiver of any condition or covenant contained in this
4 Settlement or failure to exercise a right or remedy by any of the Parties hereto shall be
5 considered to imply or constitute a further waiver by such Party of the same or any other
6 condition, covenant, right or remedy.

7 61. Enforcement Actions. In the event that one or more of the Parties institutes
8 any legal action or other proceeding against any other Party or Parties to enforce the
9 provisions of this Settlement or to declare rights and/or obligations under this
10 Settlement, the successful Party or Parties shall be entitled to recover from the
11 unsuccessful Party or Parties reasonable attorneys' fees and costs, including reasonable
12 expert witness fees incurred in connection with any enforcement actions.

13 62. Mutual Preparation. The Parties have had a full opportunity to negotiate
14 the terms and conditions of this Settlement. Accordingly, this Settlement shall not be
15 construed more strictly against one party than another merely by virtue of the fact that
16 it may have been prepared by counsel for one of the Parties, it being recognized that,
17 because of the arms-length negotiations between the Parties, all Parties have contributed
18 to the preparation of this Settlement.

19 63. Representation By Counsel. The Parties acknowledge that they have been
20 represented by counsel throughout all negotiations that preceded the execution of this
21 Settlement, and that this Settlement has been executed with the consent and advice of
22 counsel. Further, Plaintiffs and Class Counsel warrant and represent that there are no
23 liens on the Settlement. Class Counsel also represents that there are no attorneys who
24 have or could have any liens with respect to any aspect of this Settlement, or any funds
25 received by the Named Plaintiffs.

26 64. All Terms Subject to Final Court Approval. All amounts and procedures
27 described in this Settlement herein shall be subject to final Court approval.

28 65. Cooperation and Execution of Necessary Documents. All Parties shall

1 cooperate in good faith and execute all documents to the extent reasonably necessary to
2 effectuate the terms of this Settlement.

3 66. Binding Agreement. The Parties warrant that they understand and have
4 full authority to enter into this Settlement, and further intend that this Settlement shall
5 be fully enforceable and binding on all parties, and agree that it shall be admissible and
6 subject to disclosure in any proceeding to enforce its terms, notwithstanding any
7 mediation confidentiality provisions that otherwise might apply under federal or state
8 law.

9 67. Notices. Unless otherwise specifically provided, all notices, demands or
10 other communications given shall be in writing and shall be deemed to have been duly
11 given by the third business day after mailing by United States registered or certified
12 mail, return receipt requested, addressed as follows:

13 **To Plaintiffs and the Class:**

14 Larry W. Lee, Esq. SBN 228175
15 DIVERSITY LAW GROUP, P.C.
16 515 S. Figueroa St., Suite 1250
17 Los Angeles, CA 90071

18 Ari E. Moss (ari@mossbollinger.com)
19 Kiara Bramasco (kiara@mossbollinger.com)
20 15300 Ventura Blvd., Ste 207
21 Sherman Oaks, CA 91403

22 **To Defendant USA Waste:**

23
24 David J. Dow
25 LITTLER MENDELSON, P.C.
26 501 West Broadway, Suite 900
27 San Diego, CA 92101
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED.

Dated: 4/1/2021 _____

PLAINTIFF ROSNY AGUILAR

DocuSigned by:
Rosny Aguilar
07FDA672BD5149C...

Rosny Aguilar

PLAINTIFF JANETIRA REED THOM

Dated: _____

Janetira Reed Thom

DEFENDANT USA WASTE OF CALIFORNIA, INC.

Dated: _____

By: _____
NAME:
TITLE:
USA Waste of California, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED.


PLAINTIFF ROSNY AGUILAR

Dated: _____

Rosny Aguilar

PLAINTIFF JANETIRA REED THOM

Dated: 4/1/2021 _____

DocuSigned by:


Janetira Reed Thom

DEFENDANT USA WASTE OF CALIFORNIA, INC.

Dated: _____

By: _____
NAME:
TITLE:
USA Waste of California, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED.

PLAINTIFF ROSNY AGUILAR

Dated: _____

Rosny Aguilar

PLAINTIFF JANETIRA REED THOM

Dated: _____

Janetira Reed Thom

DEFENDANT USA WASTE OF CALIFORNIA, INC.


Dated: April 9, 2021

By: Courtney A. Tippy
NAME: Courtney A. Tippy
TITLE: Vice President and Secretary
USA Waste of California, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM:

Dated: April 2, 2021



/s/
Dennis A. Moss
Ari E. Moss
Jeremy F. Bollinger
Kiara Bramasco
MOSS BOLLINGER, LLP
Attorneys for Plaintiff
ROSNY AGUILAR

Dated: _____

/s/
William L. Marder
Edward W. Choi
Larry W. Lee
Dennis S. Hyun
Attorneys for Plaintiff
JANETIRA REED THOM

Dated: _____

/s/
David J. Dow
LITTLER MENDELSON, P.C.
Attorneys for Defendant
USA WASTE OF CALIFORNIA,
INC.

4833-7197-6159.4 / 080840-1029

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM:

Dated: _____

/s/ _____
Dennis A. Moss
Ari E. Moss
Jeremy F. Bollinger
Kiara Bramasco
MOSS BOLLINGER, LLP
Attorneys for Plaintiff
ROSNY AGUILAR

Dated: _____

/s/  _____
William L. Marder
Edward W. Choi
Larry W. Lee
Dennis S. Hyun
Attorneys for Plaintiff
JANETIRA REED THOM

Dated: April 13, 2021

/s/ David Dow _____
David J. Dow
LITTLER MENDELSON, P.C.
Attorneys for Defendant
USA WASTE OF CALIFORNIA,
INC.

4833-7197-6159.4 / 080840-1029